

**U.S. DISTRICT COURT**  
**U.S. District Court, Western District of New York (Buffalo)**  
**CIVIL DOCKET FOR CASE #: 1:16-cv-00104-RJA-JJM**

Kurtz, et al v. U.S. Department of Justice  
Assigned to: Hon. Richard J. Arcara  
Referred to: Hon. Jeremiah J. McCarthy  
Cause: 05:552 Freedom of Information Act

Date Filed: 02/08/2016  
Jury Demand: None  
Nature of Suit: 895 Freedom of  
Information Act  
Jurisdiction: U.S. Government Defendant

**Plaintiff****Steven John Kurtz**

represented by **Michael Kuzma**  
1893 Clinton Street  
Buffalo, NY 14206  
(716) 822-7645  
Fax: 716-823-1815  
Email: [kuzma\\_michael@hotmail.com](mailto:kuzma_michael@hotmail.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff****Jennifer Gradecki**

represented by **Michael Kuzma**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

V.

**Defendant****U.S. Department of Justice**

represented by **Michael S. Cerrone**  
U.S. Attorney's Office  
Federal Centre  
138 Delaware Avenue  
Buffalo, NY 14202  
716-843-5851  
Fax: 716-551-3196  
Email: [michael.cerrone@usdoj.gov](mailto:michael.cerrone@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
02/08/2016	<u>1</u>	COMPLAINT against All Plaintiffs ( Filing fee \$ 400 receipt number 0209-2458787.), filed by Steven John Kurtz, Jennifer Gradecki.(Kuzma, Michael) (Entered: 02/08/2016)
02/09/2016		E-Filing Notification: Attorney must file a civil cover sheet using the event "continuation of exhibits". (KM) (Entered: 02/09/2016)
02/12/2016		Case Assigned to Hon. Richard J. Arcara. (KM) (Entered: 02/12/2016)
02/12/2016		Notice of Availability of Magistrate Judge: A United States Magistrate of this Court is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. 636c and FRCP 73. The Notice, Consent, and Reference of a Civil Action to a Magistrate Judge form (AO-85) is available for download at <a href="http://www.uscourts.gov/services-forms-forms">http://www.uscourts.gov/services-forms-forms</a> . Notification to chambers of on-line civil opening. (KM) (Entered: 02/12/2016)
02/12/2016		AUTOMATIC REFERRAL to Mediation The ADR Plan is available for download at <a href="http://www.nywd.uscourts.gov/alternative-dispute-resolution">http://www.nywd.uscourts.gov/alternative-dispute-resolution</a> .(KM) (Entered: 02/12/2016)

02/12/2016		Summons issued. (KM) (Entered: 02/12/2016)
02/15/2016	<u>2</u>	AFFIDAVIT of Service for Summons and Complaint served on U. S. Department of Justice on 02/12/2016, filed by Jennifer Gradecki, Steven John Kurtz. (Kuzma, Michael) (Entered: 02/15/2016)
03/02/2016	<u>3</u>	NOTICE of Appearance by Michael S. Cerrone on behalf of U.S. Department of Justice (Cerrone, Michael) (Entered: 03/02/2016)
03/04/2016	<u>4</u>	ANSWER to <u>1</u> Complaint by U.S. Department of Justice.(Cerrone, Michael) (Entered: 03/04/2016)
03/07/2016		AUTOMATIC REFERRAL to Mediation The ADR Plan is available for download at <a href="http://www.nywd.uscourts.gov/alternative-dispute-resolution">http://www.nywd.uscourts.gov/alternative-dispute-resolution</a> (KM) (Entered: 03/07/2016)
03/08/2016	<u>5</u>	First MOTION for Disclosure <i>Vaughn Index</i> by Jennifer Gradecki, Steven John Kurtz. (Attachments: # <u>1</u> Memorandum in Support Vaughn Index)(Kuzma, Michael) (Entered: 03/08/2016)
03/09/2016	<u>6</u>	TEXT ORDER: Pursuant to Federal Rule of Civil Procedure 26(f), the parties shall confer for the purposes set forth in Rule 26(f)(2) and to propose a Case Management Order that will establish outside cut-off dates for the further progress of this case, including: (1) motions to amend the pleadings or add parties; (2) to the extent required in this case, commencement and completion of all fact discovery; (3) to the extent required in this case, completion of all expert discovery, including strict compliance with Fed. R. Civ. P. 26(a)(2) regarding the identification and filing reports of testifying experts; (3) motions to compel; and (4) a proposed briefing schedule for any dispositive motions, including a proposed briefing schedule for Plaintiff's motion <u>5</u> for a Vaughn index. Because this matter appears to be exempt from Rule 26(a)'s initial disclosure requirements (see Rule 26(a)(1)(B)(i)), the parties' proposed Case Management Order need not establish outside cut-off dates for Rule 26(a) disclosures. Further, because this case largely involves judicial review of administrative action, the Court, pursuant to Section 2.2(D) of the Court's ADR Plan, sua sponte exempts this case from automatic referral to the Court's ADR program. Thus, the parties need not address issues related to ADR in their Rule 26(f) report. The parties shall file their Rule 26(f) report on or before March 30, 2016. Any failure by a party or the party's attorney to participate in good faith in the development and submission of a proposed discovery plan required by Rule 26(f) or this Text Order may result in the award of expenses and attorney's fees to the other party caused by such failure. See Fed. R. Civ. P. 37(g). SO ORDERED. Issued by the Hon. Richard J. Arcara on March 9, 2016 (CMK). (Entered: 03/09/2016)
03/30/2016	<u>7</u>	NOTICE by U.S. Department of Justice ( <i>JOINT PROPOSED CASE MANAGEMENT ORDER</i> ) (Cerrone, Michael) (Entered: 03/30/2016)
04/05/2016	<u>8</u>	CASE MANAGEMENT ORDER (Please Note: This docket text may not contain the entire contents of the attached Order. It is your responsibility to read the attached Order and download it for future reference. Direct any questions to the Chambers of the Judge who entered this Order.)Motions to Join Parties/Amend Pleadings due by 4/30/2016. Dispositive motions due on or before 1/31/2017. Responses to dispositive motions due on or before 2/28/2017. Replies to dispositive motions due on or before by 3/31/2017. Signed by Hon. Richard J. Arcara on 4/5/2016. (KM) (Entered: 04/07/2016)
11/18/2016	<u>9</u>	MOTION for Extension of Time to Complete Discovery by U.S. Department of Justice.(Cerrone, Michael) (Entered: 11/18/2016)
11/18/2016	<u>10</u>	DECLARATION signed by Michael S. Cerrone re <u>9</u> MOTION for Extension of Time to Complete Discovery filed by U.S. Department of Justice . (Cerrone, Michael) (Entered: 11/18/2016)
11/21/2016	<u>11</u>	TEXT ORDER granting the Government's Motion for Extension of Time to Complete Discovery <u>9</u> . The deadlines are extended as follows: Release of non-exempt documents responsive to plaintiffs FOIA demands shall be filed on or before December 31, 2016; Vaughn index shall be filed on or before March 17, 2017; and dispositive motions are to be filed no later than April 28, 2017. SO ORDERED. Issued by Hon. Richard J. Arcara on 11/21/16. (LAS) (Entered: 11/21/2016)

03/17/2017	<u>12</u>	DECLARATION filed by U.S. Department of Justice ( <i>Vaughn Index</i> ). (Cerrone, Michael) (Entered: 03/17/2017)
04/21/2017	<u>13</u>	MOTION for Extension of Time to File <i>Dispositive Motions</i> by U.S. Department of Justice.(Cerrone, Michael) (Entered: 04/21/2017)
04/21/2017	<u>14</u>	DECLARATION signed by Michael S. Cerrone re <u>13</u> MOTION for Extension of Time to File <i>Dispositive Motions</i> filed by U.S. Department of Justice . (Cerrone, Michael) (Entered: 04/21/2017)
04/25/2017	<u>15</u>	TEXT ORDER granting Defendant's <u>13</u> Motion for Extension of Time to file dispositive motions up to and including May 31, 2017. SO ORDERED. Issued by Hon. Richard J. Arcara on 4/25/17. (LAS) (Entered: 04/25/2017)
05/31/2017	<u>16</u>	MOTION for Extension of Time to File <i>Dispositive Motions</i> by U.S. Department of Justice.(Cerrone, Michael) (Entered: 05/31/2017)
05/31/2017	<u>17</u>	DECLARATION signed by Michael S. Cerrone re <u>16</u> MOTION for Extension of Time to File <i>Dispositive Motions</i> filed by U.S. Department of Justice . (Cerrone, Michael) (Entered: 05/31/2017)
06/06/2017	<u>18</u>	TEXT ORDER: Defendant's <u>16</u> Motion for Extension of Time to file dispositive motions up to and including June 14, 2017 is granted <i>nunc pro tunc</i> . SO ORDERED. Issued by Hon. Richard J. Arcara on 6/6/17. (LAS) (Entered: 06/06/2017)
06/07/2017	<u>19</u>	MOTION for Summary Judgment <i>and dismissal of plaintiff's complaint</i> by U.S. Department of Justice. (Attachments: # <u>1</u> Declaration of David M. Hardy, # <u>2</u> Exhibit A–D, # <u>3</u> Exhibit E–J, # <u>4</u> Exhibit K–N, # <u>5</u> Exhibit O–S)(Cerrone, Michael) (Entered: 06/07/2017)
06/07/2017	<u>20</u>	MEMORANDUM IN SUPPORT re <u>19</u> MOTION for Summary Judgment <i>and dismissal of plaintiff's complaint</i> byU.S. Department of Justice. (Cerrone, Michael) (Entered: 06/07/2017)
06/07/2017	<u>21</u>	STATEMENT OF FACTS by U.S. Department of Justice. (Cerrone, Michael) (Entered: 06/07/2017)
06/08/2017	<u>22</u>	TEXT ORDER: The deadlines in the Case Management Order <u>8</u> are extended as follows: Responses to the defendant's summary judgment motion and dismissal of plaintiff's complaint <u>19</u> shall be filed on or before July 5, 2017; Replies are due no later than August 2, 2017. SO ORDERED. Issued by Hon. Richard J. Arcara on 6/8/17. (LAS) (Entered: 06/08/2017)
07/05/2017	<u>23</u>	First MOTION for Summary Judgment by Jennifer Gradecki, Steven John Kurtz. (Attachments: # <u>1</u> Statement of Undisputed Facts, # <u>2</u> Affidavit Jennifer Gradecki, # <u>3</u> Memorandum in Support)(Kuzma, Michael) (Entered: 07/05/2017)
08/02/2017	<u>24</u>	REPLY/RESPONSE to re <u>19</u> MOTION for Summary Judgment <i>and dismissal of plaintiff's complaint</i> filed by U.S. Department of Justice. (Cerrone, Michael) (Entered: 08/02/2017)
08/02/2017	<u>25</u>	REPLY/RESPONSE to re <u>23</u> First MOTION for Summary Judgment ( <i>Response to Statement of Undisputed Facts</i> ) filed by U.S. Department of Justice. (Cerrone, Michael) (Entered: 08/02/2017)
08/02/2017	<u>26</u>	DECLARATION signed by David M. Hardy filed by U.S. Department of Justice . (Cerrone, Michael) (Entered: 08/02/2017)
10/08/2019		NOTICE OF SCHEDULING: Status Conference set for 11/15/2019 at 9:00 AM before Hon. Richard J. Arcara. Issued by Hon. Richard J. Arcara on 10/8/2019. (LAS) (Entered: 10/08/2019)
11/15/2019	<u>27</u>	Minute Entry for proceedings held before Hon. Jeremiah J. McCarthy: Status conference held on 11/15/2019. J. Arcara referred case to Magistrate Judge McCarthy for R&R on pending motion. If consent is filed, Magistrate Judge McCarthy will issue a D&O. APPEARANCES: plaintiffs represented by atty M. Kuzma; defendant represented by atty M. Cerrone. (FTR GOLD) (JD) (Entered: 11/15/2019)

11/15/2019		Minute Entry for proceeding held 11/15/2019 before Hon. Richard J. Arcara. Status conference is held. The parties report that there have been no changes in the status of the case since the motions for summary judgment were filed. The Court questions the parties if they would consider consenting to a Magistrate Judge. Pltfs are willing to consent. Counsel for the Deft needs client approval. A recess is taken to afford defense counsel an opportunity to reach to his client about the consent. Proceeding resumes. Defense counsel was unable to get a response from his client. The Court directs counsel to see Magistrate Judge Jeremiah J. McCarthy for further proceedings on this case. If both parties consent, Magistrate Judge McCarthy will be the presiding Judge on this matter and issue a decision and order on the pending summary judgement motions. If there is no consent from defendant, the Court will refer this matter to Magistrate Judge McCarthy for a Report and Recommendation on the pending summary judgment motions. Appearances: Pltfs by Michael Kuzma; Deft by Michael Cerrone and David Coriell (Court Reporter Megan Pelka.) (DJD) (Entered: 11/19/2019)
11/22/2019	28	TEXT ORDER REFERRING CASE to Magistrate Judge Hon. Jeremiah J. McCarthy. The Magistrate Judge is hereby designated to act in this case as follows: Pursuant to 28 U.S.C. Section 636(b)(1)(A) and (B), all pre-trial matters in this case are referred to the above-named United States Magistrate Judge, including but not limited to: (1) conduct of a scheduling conference and entry of a scheduling order pursuant to Fed. R. Civ. P. 16, (2) hearing and disposition of all non-dispositive motions or applications, (3) supervision of discovery, and (4) supervision of all procedural matters involving the aforementioned or involving the preparation of the case or any matter therein for consideration by the District Judge. The Magistrate Judge shall also hear and report upon dispositive motions for the consideration of the District Judge pursuant to 28 U.S.C. Section 636(b)(1)(B) and (C). All motions or applications shall be filed with the Clerk and made returnable before the Magistrate Judge. The parties are encouraged to consider the provisions of 28 U.S.C. Section 636(c) governing consent to either partial or complete disposition of the case, including trial if necessary, by the Magistrate Judge. Consent forms are available from the office of the Magistrate Judge or the office of the Clerk of Court. IT IS SO ORDERED. Issued by Hon. Richard J. Arcara on 11/22/2019. (LAS) (Entered: 11/22/2019)